UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA

JUSTINE WHITE, as parent and natural guardian of JAMIE R. ALLBRIGHT, a minor,

Plaintiff,

v.

REPORT AND RECOMMENDATION

Civil No: 05-0526 (DWF/JJG)

JO ANNE B. BARNHART,

Commissioner of Social Security,

Defendant.

JEANNE J. GRAHAM, United States Magistrate Judge.

Plaintiff Justine White seeks judicial review of the final decision of the Commissioner of Social Security ("Commissioner"), who denied her application, filed on behalf of her minor son, for supplemental security income benefits under the Social Security Act, 42 U.S.C. §§ 401 *et seq*. The matter has been referred to the undersigned Magistrate Judge for a Report and Recommendation pursuant to 28 U.S.C. § 636 and D. Minn. LR 72.1. The parties have submitted cross motions for summary judgment. For the reasons set forth below, this Court recommends that the Commissioner's determinations regarding the absence of disability under the Act be affirmed, but that the case be remanded with an order that the Administrative Law Judge supplement his written decision to bring it into compliance with applicable regulations and policies.

I. PROCEDURAL HISTORY

On October 22, 2001, Justine White protectively filed an application for supplemental income benefits on behalf of her minor son, Jamie R. Allbright, claiming he was disabled due to attention-deficit hyperactivity disorder and depression with possible mania, with a disability onset date of September 4, 2001. (R. at 53-54, 60). The Social Security Administration initially denied the application and again on reconsideration. (R. at 23-26). Following a timely request by Ms. White, a hearing before an Administrative Law Judge ("ALJ") took place on August 12, 2003.

Claimant, accompanied by his step-father, appeared and testified at the hearing. (R. at 292). Ms. White appeared and testified by telephone. (<u>Id.</u>). Claimant and Ms. White were represented by an attorney. (<u>Id.</u>). A medical expert also appeared and testified before the ALJ (<u>Id.</u>).

The ALJ issued an unfavorable decision on October 24, 2003. (R. at 16-22). In his decision, the ALJ employed the three-step sequential analysis required under 20 C.F.R. § 416.924 *et seq*. The three-step sequential analysis is applied to determine whether a child is eligible for supplemental security income benefits on the basis of disability. Pepper ex rel. Gardner v. Barnhart, 342 F.3d 853, 854 (8th Cir. 2003). First, the minor child cannot be gainfully employed. Id.; 20 C.F.R. § 416.924(b). If the child meets this threshold requirement and is not engaged in substantial gainful activity, the ALJ must next consider whether the child's impairment or combination of impairments is "severe." Pepper, 342 F.3d at 854; 20 C.F.R. § 416.924(c). If so, the ALJ determines whether the child's impairments meet, medically equal, or functionally equal an impairment listed in Appendix to Subpart P, Regulations 4. Pepper, 342 F.3d at 854; 20 C.F.R. § 416.924(d). If they do, and if a twelve-month durational requirement is met, disability is established. See Pepper, 342 F.3d at 854.

In step one of the analysis, the ALJ found no indication in the record that Claimant has ever

worked. The ALJ thus determined that he was not engaged in substantial gainful activity at any time since the alleged onset date of September 4, 2001. (R. at 17). Next the ALJ found that the evidence in the record, including the testimony of the medical expert at the hearing, demonstrated that Claimant has "medically determined impairments best described as ADHD, mood disorder not otherwise specified and marijuana dependence currently in partial remission," and that "these impairments alone or in combination are 'severe' within the meaning of the Regulations." (Id.).

However, the ALJ then found that Claimant was not disabled at step three of the sequential evaluation. (R. at 19). First, the ALJ found that Claimant's limitations did not meet a listed impairment. Then the ALJ concluded Claimant's impairment or combination of impairments did not medically equal in severity the criteria for a listed impairment. (Id.). Finally, the ALJ considered whether Claimant had an impairment that was functionally equivalent in severity to a listed impairment. In finding that the Claimant did not have an impairment or combination of impairments that functionally equals a listing, the ALJ stated he had carefully considered the entire record including prior determinations by non-examining physicians of the State Agency. (R. at 20). The ALJ further indicated that he gave "controlling weight to the testimony of the medical expert who was present at the hearing" in making his determination that Claimant does not have an impairment or combination of impairments which functionally equals a listing. (Id.). Accordingly, the ALJ found no disability as defined in the Social Security Act and denied benefits.

Plaintiff Justine White, on behalf of her son, appealed the decision of the ALJ, and submitted additional medical evidence to the Appeals Council. (R. at 255, 256-289). The Appeals Council denied her request for review on January 7, 2005. (R. at 7). The decision of the ALJ therefore became the final decision of the Commissioner. (Id.). Plaintiff brings the instant civil action to this court for review of the

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- 29. A composition comprising purified recombinant adenovirus particles in accordance with claim 28.
- 30. A composition in accordance with claim 29 which comprises aphysiologically acceptable carrier.
 - 31. A method for effecting the delivery and expression of the HIV-1 gene comprising administering the composition of claim 30 prior or subsequent to administration of the HIV-1 gene with the same or different vector.
 - 32. A method in accordance with claim 31 wherein the composition is preceded or followed by administration of the HIV-1 gene with an adenovirus of a different serotype.
- 15 33. A method for generating a cellular-mediated immune response against HIV in an individual comprising administering to the individual a composition of claim 29.
 - 34. A composition in accordance with claim 29 wherein the HIV antigen is HIV-1 gag or immunologically relevant modification thereof.
 - 35. A composition in accordance with claim 29 wherein the HIV antigen is HIV-1 nef or immunologically relevant modification thereof.
- 36. A composition in accordance with claim 29 wherein the HIV antigen is HIV-1 pol or immunologically relevant modification thereof.